

## "Original Package"

Has Been Defined by Judge Simonton.

Shipments Loose in Cars Appear Allowable, But State Will Probably Test Point.

Special to The State.

Charleston, Aug. 7.—Judge Simonton handed down to-day his decision in the cases involving the construction of an "original package" in commerce which were argued before him last week at Elai Rook, N. C.

The decision, as was generally expected, is something of a blow to the dispensary, in that the contentions of Attorney General Barber were not maintained save in one case. The general interpretation of original package stands, as understood by many at the time Judge Simonton decided that foreign dealers had the right to sell liquors in original packages within the State and that so much of the dispensary act which forbade such sales was unconstitutional.

Judge Simonton construes an "original package" to mean the package as it is handed to the common carrier and delivered to the consignee. If the box or barrel is opened and bottles removed such box or barrel ceases to be an original package.

By the terms of the decision as construed here, liquor house will have to ship their goods into the State in a loose state, as was done by Guckenheimer & Sons, that the bottles may be sold individually.

The decision is considered a victory for Guckenheimer & Sons, as their agents did not have occasion to open barrels or boxes, the liquors being received in a loose state.

The following is the full text of the decision:

The United States of America, District of South Carolina—In the Circuit Court Fourth Circuit. In Equity.

S. Guckenheimer & Sons, vs. W. W. Sellers et al. Charles M. Pfeiffer & Co. vs. Perry D. Gilrath et al. Charles M. Pfeiffer & Co. vs. J. E. Moorhead et al. The Portner Brewing Co. vs. J. E. Moorhead et al.

These four cases, differing somewhat in detail, have been heard together. They all present the same question, What is an original package? and before any of these can be decided this question must be first settled.

It has been established by decisions which cannot now be questioned that liquor imported into a State is subject to the exercise of its police power, whether brought in original packages or otherwise. And that when the use of intoxicating liquors as a beverage has been forbidden by State law as injurious to the health, welfare of the State, no sale of such liquor can be made within that State, for such purpose, by any one either resident or importer. It has further been established by the decision of the supreme court that the dispensary law of South Carolina does not declare the use of intoxicating liquors as a beverage injurious to the health, welfare and the safety of the State. That, on the contrary, the State itself imports in quantities and sells at a profit intoxicating liquors for use as a beverage. That the prohibition by the State itself or with the consent of the State, is not the exercise of the police power, but an interference with and a regulation of interstate commerce. That under the Constitution of the United States such interference and regulation are void. But the police power begins when interstate commerce ends. The imported article when it comes into a State and becomes mingled with the other property of the State becomes subject to all intra state commerce regulations. And in South Carolina the State, in the full and lawful exercise of her police power, has both in the Constitution and in the dispensary act, made such regulations which must be obeyed. Interstate commerce protects only that which is the subject of commerce, which is transported over the lines of interstate communication, and only so long as it preserves the form and remains the exact subject of importation. When it is broken or when it changes its form, when it passes from the importer to the buyer, it ceases to be an article of interstate commerce and no longer enjoys its protection.

A cask of brandy may be imported into a State whose laws recognize that intoxicating liquors can be advantageously used as a beverage; and in that form can be sold by the importer. But he cannot change the form of the package, nor open it, nor draw from it, nor sell parts of it. He can only deal with it as a whole, if the State laws regulate or control, or allow the sale on condition or in a prescribed method, of intoxicating liquors as a beverage. And unless the State laws permit it, no purchaser of the imported cask can sell or dispose of it to another in any way in whole or in part.

The original package only being protected under the law of interstate commerce, the question, what is an original package, is of grave importance. In arriving at a conclusion on this question no aid is given from acts of congress, as is afforded in ascertaining what is an original package in the matter of cigarettes, another article of interstate commerce which frequently

vised statutes has proscribed what shall be an original package of cigarettes. No similar provision has been made anywhere with regard to liquors. For this reason the cases quoted relating to cigarettes cannot aid us. (In re Minor, 69 Fed. Rep. 235. State vs. McGregory, 76 Fed. Rep. 957. State vs. Goetze, 27, So. E. Rep. 225.)

An examination of the large number of cases which have been quoted by counsel shows that the question under discussion is largely a question of fact, determinable by the circumstances of each case. A text writer in the American and English Encyclopedia of Law, Vol. 17, says: "An original package within the sense of the interstate commerce regulations is the unbroken package imported into a State from another State or a foreign country before by sale or otherwise it gets into the mass of the general property in the State."

The form or size of the package the importer determines for himself. State vs. Winters, 25 Pacific Rep. (Kansas) 235. However small the package may be, so long as it is an original package it is protected. (In re Beine, 42, Fed. Rep. 545.)

If, however, the package as put up by the importer contains a number of other and smaller packages, each sealed, such as beer bottles in a barrel, or wine or whiskey in a case, to which would the term original package apply, the bottles (each) or the barrel or box?

The decided cases are not uniform in their answer to this question. In State vs. Keith, 91 Ala., these were the facts: "The liquor was shipped by Lowenthal & Co., wholesale and retail liquor dealers residing in Nashville, Tenn., in half pint, pint and quart bottles. The bottles were separately wrapped in tissue paper, each labeled 'original package' with the name of the importer and shipper, in an open box with hay laid between them, each box marked with the number of bottles, and their sizes, contained therein. From the bill of lading in evidence it appeared that the box contained 1,075 bottles and 25 jugs of liquor, and that shipped at the same time were 20 casks containing bottles of beer and three casks containing bottles of ale. This was done to facilitate shipment. Rion sold whiskey as the agent of importer by the single bottle wrapped and labelled as stated. After an elaborate opinion the court held that the boxes and barrels, not the bottles, were original packages. A similar decision was made in South Dakota, State vs. Chapman, 47 Northwestern Rep. 411. And also in Nebraska, Hailey vs. the State, 60 Northwest Rep. 962. And in Iowa, State vs. Coonan, 48 Northwestern 921, holds that the bottles if sealed without the State were the original packages and not the boxes or barrels in which they came. In Commonwealth vs. Beckman, 31 Atlantic Rep. 12, the court is emphatic. In that case the agent of a dealer in another State received on consignment, pint and quart bottles of liquor, each bottle in a paste board box, sealed with a strip of paper across the lid and stamped with the name of the firm. These packages came in boxes and barrels to the agent, who unpacked them when they arrived and put the pasteboard packages on the shelves. The court says on this state of facts: 'The claim of defendant that he was selling only in the original packages was little better than a burlesque.'

The Federal cases are few in number. Judge Hall, of the district of Mississippi, held (in re Harmon, 43 Fed. Rep. 372) that when bottles of whiskey were put in a wooden box and so imported, the box not the bottle, was the original package. The circuit court of appeals of the Seventh circuit, in United States vs. 132 Packages, 76 Fed. Rep. 364, discuss the meaning of the word package as used in section 3449 Revised Statutes of the United States. "The term package means every box, barrel or other receptacle into which distilled spirits have been placed for shipment or removal, either in quantity or in separate small packages, as bottles or jugs."

Although none of these authorities are conclusive, they greatly assist in reaching a decision. These shipmen look for their protection to the law of interstate commerce. It is that unit, the thing which the carrier receives, transports and delivers as an article of commerce, which is protected. The protection of the law is given that which is imported through these channels and in this way. The importer decides for himself the size and form of the package which he seeks to import. He puts it up in the shape in which he wishes to import it, gives it the initial steps which puts it in transit, and so makes it the subject of interstate commerce. "The original package was and is the package as it existed at the time of its transportation from one State to another." (State vs. Winters, 25 Pac. Rep. 237.) "An original package is a bundle put up for transportation or commercial handling and usually consists of a number of things bound together convenient for handling and conveyance" (State vs. Board of Assessors, La. 49 Am. St. Rep. 318.) The case of State vs. Keith, 91 Ala. (8 So. Rep. 354) expresses this idea clearly. "Merely labelling each bottle original package does not make it one if it was not really the original package. The term to pack in its original significance, especially with reference to

gether and prepare for transportation. As to make up a bundle or bale or box or other receptacle. They do not form as many and separate packages as there are articles, though they may be wrapped separately. The case or bale in which separate articles are placed together for transportation constitutes the original packages." So in re Beine, 42 Fed. Rep. 546, which holds that the importer will be protected in his importation, however small may be the bulk of the package, decided that bottles could be original packages when they were sealed and nailed up separately, not packed in any other box, but shipped singly, and separately. This case, by the way, is at variance with the Pennsylvania cases quoted by the attorney general (Commonwealth vs. Paul, 170 Pac. State, 284. Same vs. Schollenberger, 156 Pa. State, 201) and its conclusion is performed to them. Retail trade as well as wholesale trade, is included in the idea of commerce.

Considering all these cases and the others quoted in argument, it appears that the original package is the package delivered by the importer to the carrier at the initial place of shipment in the exact condition in which it was shipped. If in single bottles shipped singly, or if in packages of three or more securely fastened together and marked, or if in a box, barrel, crate or other receptacle, the single bottle in the one instance, the three or more bottles in another instance, the barrel, box, crate or other receptacle respectively constitute the original package. If sold or delivered it must be sold or delivered as shipped and received. If the package be broken after such delivery it comes within the police regulations of the State, and any sale or delivery in such case is unlawful.

Let an order be prepared in each case in accordance with this opinion. CHARLES H. SIMONTON, Circuit Judge.

## His Pride Lost, And Sought Death.

"Jack had to sell cheap Winter clothes in this weather," said his most intimate friend, Joseph W. Gibson, publisher of the Clothing Gazette, yesterday.

Mr. Gibson pointed to the long counters filled with heavy fur-lined overcoats that clerks lifted with difficulty, and sighed:

"Jack was not accustomed to cheap goods," he continued. That is why Jack, whose serious name is Jacob T. Jacobi, went to Passaic with a pistol and, under the shade of an elm, shot at his heart.

He missed his heart by an inch. He is at Passaic, in the St. Mary's Hospital, and his wife is near him. The physicians say that he will not die. He says that he is anxious to live.

He left the store of Heckheimer & Co., at No. 714 Broadway, at 11 o'clock Monday, after a conversation with the bookkeeper. At noon he was at the office of his friend Gibson, with whom he had a pleasant conversation.

He left Mr. Gibson's office and was not heard of again until the news came of his attempt to kill himself yesterday. Then, wherever there was a group of men in the district where the wholesale clothing stores are, there was discussed the enigma, "What could have made Jack try to kill himself?"

A native of Florence, S. C., a descendant of one of the old Jewish families of the State, a man of education, tall, with lustrous black eyes and radiating happiness, in perpetual good humor, Jack, as every body calls him, is popular.

He is a charming story teller, carrying in his travels from town to town, like an ancient minstrel, tales which he takes from the Greek, the Latin, the conversations of acquaintances.

He knows the negro folk lore, which was a mine to Joel Chandler Harris, and his friends say that he reads Shakespeare as priests read their breviary.

He is not in debt, he never drank to excess, he is devoted to his wife and two daughters. To suggest that he was, perhaps, morbid at heart is to make everybody who knows him shrug his shoulders.

Jack has been for twenty years a traveling salesman for clothing houses in the South, where traveling salesmen are expected to be very wise, very dignified and very amiable. He has always sold the handsomest overcoats and the costliest Winter suits which the South would buy ready made. But in the business depression of recent years the South has abandoned ready-made costly clothing.

So, in April, Jack became a salesman of cheap clothing, and principally of boy's clothing. Instead of delicate stuffs he had to handle coarse ones, instead of large sales to his friends he had to make a great quantity of small ones to newly formed acquaintances. This would depress any traveling salesman.

Jack was extremely sensitive. He suffered in his dignity, in his affections, in his pride of family. "Never mind," said Joseph W. Gibson to him Monday. "Two new clothing houses are to be formed next month and they will increase to nine the number of offers, which are to be made to you to quit selling cheap clothing."

But Jack went out with a solemnity which made Mr. Gibson's assistant address him, in pleasant reproof, as Mr. Jacob T. Jacobi.—N. Y. Journal.

## Prime Minister of Spain Assassinated.

WORK OF ANARCHIST.

"Long Live Spain", Dying Cry of the Statesman as He Fell at Feet of His Wife.

Madrid, Aug. 8.—Senor Canovas del Castillo, prime minister of Spain, was assassinated to-day at Santa Agueda by an anarchist. The murderer fired three shots, one of which struck the premier in the forehead and another in the chest.

The wounded man fell dying at the feet of his wife, who was with him, lingering in agony for an hour and then passing away with the cry of "Long live Spain," which were the last words upon his lips.

Santa Agueda is noted for its baths. The place is between San Sebastian, the summer residence of the Spanish court, and Vittoria, the capital of the province of Alava, about 30 miles south of Bilbao. The premier went there last Thursday to take a three week's course of the baths, after which he expected to return to San Sebastian to meet United States Minister Woodford when that gentleman should be officially received by the queen regent.

## FROM THE WIRES.

August 9.

Col. August Bennett, who was in command in Charleston when that city was under martial law, died yesterday in San Jose, Cal.

The rate of exchange in London has advanced decidedly in anticipation of the heavy export of gold to America to pay for grain that will be needed on account of the short crop in India and on the continent.

A gasoline stove blew up in Chicago yesterday, killing three people.

Ben Mayfield, a negro, was lynched at Edna, a small town near Albany, Ga., for the usual crime.

Nathaniel Mason, a negro, was shot to death on Saturday night at Glenwood, Ga., for an attempted assault. He was captured in a lady's room.

Sylvester Duncan was killed in Orangeburg county last week by John Black. Both were white men. Black has surrendered to the sheriff.

Atlanta, Ga., Aug. 9.—It develops to-day that the settlement of the big strike of the Fulton bag and cotton mills here was the work of former Secretary of the Interior Hoke Smith. The strike was the most serious labor difficulty that has developed in Atlanta in recent years, and as it involved the negro question the adjustment was difficult. Disinterested parties induced the strikers' committee and President Elsas of the company to meet in Mr. Smith's office, however, and with the former secretary acting as arbitrator an agreement was reached on terms suggested by him. The settlement is regarded as arduous for the principle of arbitration in labor disputes.

Richmond, Va., Aug. 9.—R. Carter Scott, son of the late Attorney General Scott, was to-day appointed attorney general, to fill his father's unexpired term. He has accepted and his name, it is understood, will probably go before the Roanoke convention for the nomination for the office, though he will himself make no effort in that direction.

A special to the Constitution from Bowman, Ga., says that John H. Maxwell, a well to do farmer and merchant of that place, was detected peeping into a residence window late at night. A committee gave him ten days in which to leave. The time expired and to-day a crowd of men stripped him and laid a hundred lashes on his back. He fainted and was carried into his store by his wife, who removed him. Later the mob returned, put Maxwell on the train and told him if he returned he would be killed.

## Atrocities by Armenians.

Constantinople, Aug. 9.—An official dispatch received here says that on Friday last several thousand Armenian agitators from Persia invaded Turkey. They killed 200 of the Migrik tribe, including women and children. The wife of the chief was put to death with the most cruel tortures, and several other victims had their noses and ears cut off. The authorities have taken measures to capture the marauders and to provide for eventualities in the village of Van.

## Johnson's Chill and Fever Tonic

Curc Fever In One Day

## THE RULER OF AMERICA.

Before Commodore Perry visited Japan an American vessel had been shipwrecked on one of the Japanese islands. Her surviving sailors were all imprisoned for that crime and were in prison when Perry arrived with his squadron. One of them, a lad from Oregon, hardly 21 years old, had then learned the Japanese language, so the Japanese government had a convenient interpreter when a diplomatic accident of great importance surprised them.

In an interview with some American officer on one of Perry's ships the Japanese officer on public duty slapped the American. He was not shot on the spot, but he and his were tumbled off the ship in disgrace. The crew went to quarters, and war seemed impending, when the higher Japanese officials came on board with an humble apology, and for the moment the insult seemed atoned, but it put a black cloud on the negotiation.

The Japanese government wanted to know what they had done—how high an officer had been insulted—so they sent for this Oregon prisoner and asked him.

He said he supposed the officer was a captain, from what they said of his uniform. If he were, he said, he commanded lieutenants and that lower grades were midshipmen, masters, quartermasters, boatswains and seamen. All of which the Japs wrote down.

Then they asked who this officer had above him.

"Well," said young Oregon, "if he were a captain, the commodore is above him." And they wrote that down.

"Who is above the commodore?"

"The secretary of the navy," said Oregon.

"And who is above him?"

"The president."

"And who is above him?"

"The people," said Oregon.

But in his narrative afterward he added, "And of this they could make nothing."

That story speaks well for the training boys got in the log cabins or the slab schoolhouses of Oregon 50 years ago. And if that fine fellow is still alive—and I hope he is—I wish he would write a letter to the editor of this journal to tell his after history—yes, and to tell how far the Japs chose to profit by the excellent instruction he gave them. They might have studied a good many books published in Paris, in London or in Berlin without getting as good a view of the American constitution as he gave them in two words.

But the young fellow's success at the moment was as bad as most Americans now have when they try to explain our constitutional politics to people "from the other side."

"Of this they could make nothing," he says grimly.

And this is at bottom the trouble with the diplomats of Europe, with prime ministers, and with leaders of "er majesty's hop-position," and of travelers who do America in six months from Europe and from Asia. Even men of intelligence, skill and education, when they have been born and drilled in the forms of feudalism, can make nothing of the central truth of our system. They think that it is mere gasconade or buncombe when we say that the People—people with a very large P—made the government of this nation and directs it and will continue to do so. "Of that they can make nothing."

But, all the same, it is the truth. The People made the government.

The People, armed and disciplined, is the army.

The People is the fountain of honor. The People is the ultimate appeal.

Mr. Cleveland knows this very well. President Harrison knew it. Arthur knew it. Hayes, Garfield, Grant and dear Lincoln knew it perfectly. Not one of these presidents ever spoke of himself as "the ruler of America," nor ever dreamed that he was or ever wanted to be. Each of them in his turn was the chief magistrate of America, or, if you please, the chief servant, or the chief of staff, but no one of them ever said, even to his wife in the seclusion of home, that he was the "ruler of America."

The trouble with Mr. Bayard seems to be that in an unguarded moment he forgot this central and essential principle of the American constitution.

But poor Mr. Bayard had lived so long among feudalists! And one sees his mistake in three-quarters—in nine-tenths—of what is written on such subjects by men or women who have been bred in feudal schools. In my own house once an English gentleman of great intelligence told me that he had visited the White House and was most glad to pay his respects to "the ruler of our great nation." Poor man, he thought he would please me! But he saw his mistake soon enough. I stormed out.

"Ruler of America? Who told you he was ruler of America? He never told you so. He is the first servant of America." And I hope the poor traveler learned a lesson.

But I remember sadly, what I took care not to tell him, that even in the New York Tribune within the year I had seen the president called "the ruler of America." Of course this was an accident. The Tribune knows well enough that no president ever ruled America, not for a quarter of a second. Only the blue pencil point had broken off that night in the proofreader's hand in The Tribune office.

Everything that goes wrong now is related to the schools. When a man's breakfast is burned, he writes an article to show that cooking should be taught in all the public schools.

How would it do to try this for the benefit of Mr. Bayard's successor 30 years hence?

Let each school in the nation meet in the large hall once a week, and after other proper patriotic exercise let us have a little catechism, which might be studied from the Oregon sailor's narrative.

Question. Who is above the postmaster? Answer. The postmaster general.

Q. Who is above the president? A. The supreme court.

Q. Who made the supreme court. A. We, the people of the United States. We made the nation and we rule it.

And it would not hurt the schools or the children or Mr. Bayards of the future and the people of the future if they could all be made to understand by the united efforts of teachers and parents, pulpit and press, that the People is under the rule of a Power whose mills grind surely though they grind slowly. The catechism will be complete when they learn that he is above the people and that no one else is.

E. E. HALE.

They used to say that the presence of a dog in the family was a sure sign of poverty. For "dogs" now read "bicycle."

## Biliousness

Is caused by torpid liver, which prevents digestion and permits food to ferment and putrify in the stomach. Then follow dizziness, headache,

## Hood's Pills

insomnia, nervousness, and, if not relieved, bilious fever or blood poisoning. Hood's Pills stimulate the stomach, rouse the liver, cure headache, dizziness, constipation, etc. 25 cents. Sold by all druggists. The only Pills to take with Hood's Sarsaparilla.

Claremont Lodge No. 64 A. F. M.

THE REGULAR MONTHLY COMMUNICATION of Claremont Lodge, No. 44, A. F. M., will be held on Thursday Evening, August 12th, at 7 1/2 p. m. Brethren will take due notice and govern themselves accordingly.

Great Southern Detective Agency, CHARLOTTE, N. C., DO ALL KINDS of legitimate Detective Work at reasonable rates.

ARSON, MURDER, DIVORCE SPECIALTY.

March 10—6m\*

Wilson and Summerton R. R. In effect January 15th, 1896.



TRAINS GOING NORTH.	
No. 72.*	
Leave Wilsons Mill	9 10 a m
" Jordan,	9 35 a m
" Davis,	9 45 a m
" Summerton,	10 10 a m
" Millard,	10 45 a m
" Silver,	11 10 a m
" Packville,	11 30 p m
" Tindal,	11 55 p m
" W. & S. June,	12 27 p m
Ar. Sumter,	12 30 p m

TRAINS GOING SOUTH.	
No. 73.*	
Leave Sumter,	2 30 p m
" W. & S. June,	2 35 p m
" Tindal,	2 50 p m
" Packville,	3 10 p m
" Silver,	3 35 p m
" Millard,	3 45 p m
" Summerton,	4 40 p m
" Davis,	5 20 p m
" Jordan,	5 50 p m
Ar. Wilsons Mill,	6 30 p m

Trains between Millard and St. Paul leave Millard 10 15 a m and 2 45 p m, arriving St. Paul 10 25 a m and 3 55 p m. Returning leave St. Paul 10 35 a m and 4 10 p m, and arrive Millard 10 45 a m and 4 20 p m. Daily except Sunday.

\*Daily except Sunday.

THOMAS WILSON, President.

Fast Freight Line BETWEEN

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Columbia, S. C.

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Dec 8

Atlantic Coast Line.

North-Eastern R. R. of S. C.

TRAINS GOING SOUTH.

Dated Aug 1, 1897.	No. 35	No. 25	No. 52
	A. M.	P. M.	
Le. Florence	3 35	8 00	
" Kingstree	8 59		
Ar. Lanes	4 48	9 15	P. M.
Ar. Lanes	4 48	9 15	7 52
Ar. Charl'tn	6 20	10 50	9 25
	A. M.	P. M.	P. M.

[A. M.] [P. M.] [P. M.]			
TRAINS GOING NORTH.			
	No. 78 *	No. 32 *	No. 52 *
	A. M.	P. M.	A. M.
Le. Charl'tn	5 30	5 00	7 00
Ar. Lanes	7 05	6 36	8 26
Le. Lanes	7 05	6 36	
" Kingstree	7 23		
Ar. Florence	8 25	7 55	
	A. M.	P. M.	P. M.

\*Daily. †Daily except Sunday.

No. 52 runs through to Columbia via Central R. R. of S. C.

Trains Nos. 78 and 32 run via Wilson and Fayetteville—Short Line—and make close connection for all points North.

Trains on C. & D. R. R. leave Florence 8 55 a m, arrive Darlington 9 28 a m, Cheraw 10 40 a m, Wadesboro 2 25 p m. Leave Florence, daily except Sunday, 8 10 p m, arrive Darlington 8 46 p m, Hartsville 9 35 p m, Bennettsville 9 36 p m, Gibsons 10 00 p m. Leave Florence, Sunday only 9 00 p m, arrive Darlington 9 27 a m, Hartsville 10 10 a m.

Leave Gibsons daily except Sunday 6 15 a m, Bennettsville 6 41 a m, arrive Darlington 7 40 a m. Leave Hartsville daily except Sunday 6 30 a m, arrive Darlington 7 15 a m, leave Darlington 7 45 a m, arrive Florence 8 15 a m. Leave Wadesboro, daily except Sunday 3 00 p m, Cheraw 5 15 p m, Darlington 6 29 p m, Florence 7 00